

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
October 16, 2019

LEGEND

X =

A =

B =

C =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Year =

State =

Dear :

This responds to a letter dated April 11, 2019, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted and representations within, X was incorporated on Date 1 under the laws of State, and elected to be taxed as an S corporation, effective Date 2.

On Date 3, A established Trust 1 and Trust 2 as grantor trusts. On Date 4, A transferred stock of X to Trust 1 and Trust 2. The terms of Trust 1 and Trust 2 provide that each trust would cease to be a grantor trust to A at the earlier of (1) A's death, (2) the death of the primary beneficiary, or (3) Date 6. A died on Date 7. The primary beneficiaries of Trust 1 and Trust 2 were still alive upon A's death. Thus, Trust 1 and Trust 2 ceased to be grantor trusts to A on Date 6. The beneficiaries of Trust 1 and Trust 2 failed to timely file QSST elections for Trust 1 and Trust 2 effective Date 6, thus causing X's S corporation election to terminate on Date 6.

On Date 5, B established Trust 3 and Trust 4 as grantor trusts and transferred stock of X to Trust 3 and Trust 4. B indicated that, effective Date 9, he wished to release his grantor power for Trust 3 and Trust 4. Although a document was not identified releasing B's grantor power, X represents that Trust 3 and Trust 4 have been treated since Date 9 as if each primary beneficiary were the grantor of their respective trust under § 678. The beneficiaries of Trust 3 and Trust 4 failed to timely file QSST elections for Trust 3 and Trust 4 effective Date 9. Thus if X's S corporation election had not previously terminated on Date 6, X's S corporation election would have terminated on Date 9.

On Date 8, C established Trust 5 as a grantor trust and transferred stock of X to Trust 5. X represents that, on Date 10, C intended that Trust 5 cease being treated as a grantor trust to C. Although the trust agreement did not include terms treating Trust 5 as a § 678 trust, X represents that Trust 5 has been treated as if its primary beneficiary were the grantor since Date 10. The beneficiary of Trust 5 failed to timely file a QSST election for Trust 5 effective Date 10. Thus, if X's S corporation election had not previously terminated on Date 6 or Date 9, X's S corporation election would have terminated on Date 10.

X represents that the failure to file QSST elections was discovered in Year. X represents that the failure to file the QSST elections was unintentional and was not motivated by tax avoidance or retroactive tax planning. X represents that all income has been reported on all affected returns of X and all of its shareholders consistent with the treatment of X as an S corporation and that neither X nor any of its shareholders intended to terminate X's S election.

In addition, X represents that Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5 have qualified as QSSTs under § 1361(d) at all times since Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5 acquired their X stock, and other than the inadvertent failure to timely file QSST elections for Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5, X has qualified as a small business corporation at all times since its election on Date 2. Lastly, X represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1

class of stock.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under § 1361(d)(2) will be treated as a trust described in § 1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of § 678(a)) of that portion of the trust that consists of S corporation stock to which the election under § 1361(d)(2) applies. Under § 1361(d)(2)(A), a beneficiary of a QSST may elect to have § 1361(d) apply. Under § 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) provides that for purposes of § 1361(d), the term "qualified subchapter S trust" means a trust (A) the terms of which require that – (i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust; (ii) any corpus distributed during the life of the current beneficiary may be distributed only to such beneficiary; (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary; and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

Section 1362(a) provides, in part, that a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations, provides that the current income beneficiary of the trust must make the election by signing and filing with the

service center with which the corporation files its income tax return the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1.1361-1(j)(6)(iii)(A) provides that if S corporation stock is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

Section 1.1361-1(j)(6)(iii)(E) provides that if a corporation's S election terminates because of a late QSST election, the corporation may request inadvertent termination relief under § 1362(f).

Section 1.1361-1(j)(7)(i) provides that the income beneficiary who makes the QSST election and is treated (for purposes of § 678(a)) as the owner of that portion of the trust that consists of S corporation stock is treated as the shareholder for purposes of §§ 1361(b)(1), 1366, 1367, and 1368.

Section 1.1362-4(b) provides, in relevant part, that the determination of whether a termination was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination was inadvertent. The fact that the terminating event was not reasonably within the control of the corporation and was not part of a plan to terminate the election, or the fact that the terminating event or circumstance took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event or circumstance, tends to establish that the termination of the election was inadvertent.

Section 1.1362-4(d) provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

Section 1.1362-4(f) provides, in relevant part, that the status of the corporation after the terminating event and before the determination of inadvertence is determined by the Commissioner. Inadvertent termination relief may be granted retroactively for all years for which the terminating event is effective, in which case the corporation is treated as if its election had not terminated.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 6, and that if X's S corporation election had not terminated on Date 6 that X's S corporation election would have terminated on Date 9 and Date 10. We further conclude that the terminations of X's S election on Date 6, Date 9, and Date 10 were inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation as

of Date 6 and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d).

This relief is contingent on the current income beneficiaries of Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5, filing QSST elections for Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5 within 120 days from the date of this letter. The current income beneficiaries of Trust 1 and Trust 2 must file QSST elections for Trust 1 and Trust 2, respectively, effective Date 6. The current income beneficiaries of Trust 3 and Trust 4 must file QSST elections for Trust 3 and Trust 4, respectively, effective Date 9. The current income beneficiary of Trust 5 shall file a QSST election for Trust 5 effective Date 10. A copy of this letter should be attached to the elections.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5's eligibility as QSSTs.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or whether Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5, are otherwise valid QSSTs.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Joy C. Spies

Joy C. Spies

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: